

Lynda J. Zadra-Symes (SBN 156,511)
 Lynda.Zadra-Symes@kmob.com
 Jeffrey L. Van Hoosear (SBN 147,751)
 Jeffrey.VanHoosear@kmob.com
 David G. Jankowski (SBN 205,634)
 David.Jankowski@kmob.com
 KNOBBE, MARTENS, OLSON & BEAR, LLP
 2040 Main Street
 Fourteenth Floor
 Irvine, CA 92614
 Phone: (949) 760-0404
 Facsimile: (949) 760-9502

Attorneys for Defendant/Counter-Plaintiff,
 KEATING DENTAL ARTS, INC.

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL
 CERAMICS, INC. dba GLIDEWELL
 LABORATORIES,

Plaintiff,

v.

KEATING DENTAL ARTS, INC.

Defendant.

AND RELATED COUNTERCLAIMS.

Civil Action No.
 SACV11-01309-DOC(ANx)

**KEATING DENTAL ART'S
 OBJECTIONS TO EXHIBIT
 15 TO THE DECLARATION
 OF WILLIAM WONG
 SUBMITTED IN SUPPORT
 OF GLIDEWELL'S
 MOTIONS FOR PARTIAL
 SUMMARY JUDGMENT**

Date: December 21, 2012
 Time: 10:00 a.m.
 Ctrm: 9D
 Honorable David O. Carter

1 Defendant Keating Dental Arts, Inc. (“Keating”) hereby objects to
2 **Exhibit 15 to the Declaration of William Wong** in Support of James R.
3 Glidewell Dental Ceramics, Inc.’s Motions for Summary Judgment (Docket.
4 Nos. 79, 81 and 82).

5 **I. OBJECTIONS**

6 **A. Background**

7 In support of its motions for summary judgment, Plaintiff Glidewell
8 Laboratories (“Glidewell”) submitted the Declaration of William Wong (“Wong
9 Decl.”) as Exhibit P to its Appendix of Evidence. Mr. Wong is an attorney with
10 Snell & Wilmer, counsel for Glidewell. (Wong Decl. ¶ 1.) Mr. Wong attached
11 as Exhibit 15 to his declaration “Keating prescription order forms and lab notes
12 that were produced in this action by Keating (with bates number ranging from
13 KDA-001928 to KDA-003502).” (Wong Decl. ¶ 4.)

14 In its briefing, Glidewell argues that the contents of Exhibit 15 show that
15 third party dentists have written “BruxZir,” or a varied spelling, on the forms as
16 an identifier of Glidewell, constituting evidence of actual confusion.
17 (Glidewell’s Br. in Support of MSJ of Infringement at 18–20.)

18 In its briefing, Keating argued that Glidewell’s argument regarding the
19 prescription forms is an erroneous attorney interpretation of the documents, not
20 an indication of what was in the minds of the dentists authoring the documents.
21 (Keating Opp’n (Docket No. 117) at 1, 17; Keating Reply (Docket No. 131) at
22 2, 18.) Keating pointed out that Glidewell had no declarations from the authors
23 of the documents—the dentists—to support its argument. (Docket No. 131 at
24 18.)

25 **B. Legal Discussion**

26 Glidewell is relying on the prescription order forms and ancillary
27 documents contained in Exhibit 15 to the Wong Declaration for the purpose of
28 establishing the truth of the matter asserted: the state of mind of the authors

writing “BruxZir” or a variation thereon. Glidewell has no statements from witnesses with personal knowledge (i.e., the dentists writing on the forms), but instead relies solely on the Wong Declaration attesting that Exhibit 15 comprises true and correct copies of documents produced by Keating in the case. For the purpose upon which Glidewell is relying on Exhibit 15, the statements in Exhibit 15 are inadmissible hearsay. Fed. R. Evid. 802.

C. Evidentiary Objections to the Wong Declaration

Exhibit	Objection
15	This document is hearsay because, to the extent Glidewell relies upon it, it contains out of court statements offered for the truth of the matter asserted. Fed. R. Evid. 802.

II. CONCLUSION

Keating respectfully requests that the Court strike and not consider Exhibit 15 to the Wong Declaration in deciding the parties’ motions for summary judgment.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Dec. 20, 2012

By: /s/ David G. Jankowski

Lynda J. Zadra-Symes
Jeffrey L. Van Hoosear
David G. Jankowski

Attorneys for Plaintiff,
KEATING DENTAL ARTS, INC.